

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

INTELMAP, INC.
255 Commonwealth Ave.
Concord, MA 01742

Plaintiff

vs.

Case No. 19-cv-37

SECURITIES AND EXCHANGE COMMISSION,
100 F Street, NE
Washington, DC 20002

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF
(Freedom of Information Act)

Plaintiff, IntelliMap, Inc., brings this action against Defendant, the Securities & Exchange Commission (“SEC”), to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

As further alleged below, Plaintiff has sought certain information from the SEC related to communications between SEC officials and industry groups. The SEC has not claimed that the requested information is subject to any FOIA exceptions or privilege and has not advanced any other reason why it should not be disclosed. Despite the clear statutory requirement that an agency respond to a FOIA request within 20 days (excepting Saturdays, Sundays and holidays), the SEC has failed to produce any documents in response to Plaintiff’s FOIA request. Plaintiff seeks to compel the SEC to comply with their statutory obligations under FOIA and promptly produce the requested records.

Plaintiff further alleges as follows:

PARTIES

1. Plaintiff, IntelliMap Inc. is a Massachusetts corporation headquartered at 255 Commonwealth Avenue, Concord, MA 01742.
2. Defendant, Securities and Exchange Commission is an independent agency of the United States Government under 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 551(1). SEC is headquartered at 100 F. Street NE, Washington, DC 20002. The SEC has possession, custody, and control of the documents that Plaintiff seeks in response to its FOIA request.

JURISDICTION & VENUE

3. This Court has jurisdiction over this claim pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).
4. Venue is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

STATEMENT OF FACTS

5. IntelliMap is a data solutions company that provides niche data solutions that help clients pinpoint their customer base. Among its many services, IntelliMap helps customers gain access to federal, state and local records that are releasable under the FOIA and individual state Public Records Laws.
6. On May 23, 2018, FOI Services, Inc. submitted a FOIA Request (the “FOI Services Request”) to the SEC Office of FOIA Services seeking two discrete categories of requested records:

(1) All communications (including email, written communications, telephone logs, calendar entries, or notes from any such communication) on or after October 18, 2017 between Mr. Brett Redfearn (Director, SEC Division of Trading and Markets) and any of the following individuals: T.R. Lazo; Sapna Patel; Matthew (“Matt”) Lavicka; Greg Babyak; Michael (“Mike”) Masone; Jeff Brown; Vaishali Javeri; or Jonah Platt.

(2) All communications (including email, written communications, telephone logs, calendar entries, or notes from any such communication) on or after October 18, 2017 between Mr. Brett Redfearn (Director, SEC Division of Trading and Markets) and anyone affiliated with the Securities Industry and Financial Markets Association (SIFMA), as evidenced by their email address domain of @sifma.org or their signature block indicating as such.

7. The SEC assigned the FOI Services Request tracking number 18-02057-FOIA.

8. Pursuant to the statute, within 20 days of receipt (excepting Saturdays, Sundays and legal public holidays) of the FOI Services Request – that is, no later than June 21, 2018 – the SEC was required to “determine . . . whether to comply with such request” and to “immediately notify” Plaintiff of “such determination and the reasons therefor,” and, in the case of an adverse determination, Plaintiff’s appeal rights. 5 U.S.C. § 552(a)(6)(A)(i).

9. The SEC did not provide FOI Services with a final determination within the statutory time period.

10. FOI Services routinely requested that the SEC provide updates on the status of its response to the FOI Services Request.

11. In response to one such status update request on September 24, 2018, the SEC reported that it anticipated completing its response in approximately two weeks – or approximately October 8, 2018. The SEC did not provide a completed (or partial) response by October 8, 2018.

12. In fact, despite this update, the SEC still has not provided FOI Services with a final determination nor has it released any records responsive to the FOI Services Request.

13. On November 20, 2018, IntelliMap submitted a FOIA Request (the “IntelliMap Request”) to the SEC Office of FOIA Services seeking the same categories of documents sought by FOI Services and an additional category. It requested:

(1) All communications (including email, written communications, telephone logs, calendar entries, or notes from any such communication) on or after October 18, 2017 between Mr. Brett Redfearn (Director, SEC Division of Trading and Markets) and any of the following individuals: T.R. Lazo; Sapna Patel; Matthew (“Matt”) Lavicka; Greg Babyak; Michael (“Mike”) Masone; Jeff Brown; Vaishali Javeri; or Jonah Platt.

(2) All communications (including email, written communications, telephone logs, calendar entries, or notes from any such communication) on or after October 18, 2017 between Mr. Brett Redfearn (Director, SEC Division of Trading and Markets) and anyone affiliated with the Securities Industry and Financial Markets Association (SIFMA), as evidenced by their email address domain of @sifma.org or their signature block indicating as such.

(3) All documents related to SEC FOIA Request No. 18-02057-FOIA, which was submitted on or around May 23, 2018, including any communications with the Requester, any records released to the Requester, any correspondence with SIFMA, or any internal correspondence regarding the FOIA Request.

14. A true and correct copy of the IntelliMap Request is attached as Exhibit A.

15. On November 21, 2018, the SEC acknowledged that it received the IntelliMap Request on November 20, 2018 and assigned each category of requested documents a different FOIA tracking number: FOIA Request Nos. 19-00547-FOIA, 19-00548-FOIA, and 19-00549-FOIA, respectively.

16. On December 18, 2018, the SEC sent a letter to IntelliMap invoking the 10 day extension due to unusual circumstances. It specified that “[t]hese unusual circumstances are the need for consultation with one or more other offices having a substantial interest in either the determination or the subject matter of the records.”

17. Pursuant to FOIA, within 30 days of receipt (excepting Saturdays, Sundays, and legal public holidays) of the IntelliMap Request – that is, no later than January 7, 2019 – the SEC was required to “determine . . . whether to comply with such request” and to “immediately

notify” Plaintiff of “such determination and the reasons therefor,” and, in the case of an adverse determination, Plaintiff’s appeal rights. 5 U.S.C. § 552(a)(6)(A)(i).

18. To date, IntelliMap has received no further response from the SEC related to the IntelliMap Request.

19. Thus, the SEC has not made a determination on the IntelliMap Request within the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

COUNT I - FAILURE TO COMPLY WITH FOIA

20. IntelliMap incorporates each of the foregoing paragraphs of this Complaint.

21. Pursuant to FOIA, 5 U.S.C. § 552(a), IntelliMap has a statutory right to access requested agency records.

22. The SEC has failed to comply with the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

23. The SEC has failed to conduct a reasonable search for records responsive to the requests.

24. The SEC has failed to properly respond to IntelliMap’s record request, as required by 5 U.S.C. §§ 552(a)(6)(A)(i)(I)-(III).

PRAYER FOR RELIEF

WHEREFORE, IntelliMap Inc. respectfully requests that this Court enter a judgment for Plaintiff and award the following relief:

- a. Order Defendants, by a date certain, to conduct a search that is reasonably likely to lead to the discovery of any and all records responsive to Plaintiff’s request;
- b. Order Defendants, by a date certain, to demonstrate that it has conducted an adequate search;

- c. Order Defendants, by a date certain, to produce to Plaintiff any and all non-exempt records or portions of records responsive to Plaintiff's request, as well as a *Vaughn* index of any records or portions of records withheld due to a claim of exemption;
- d. Enjoin Defendants from withholding the requested records;
- e. Award Plaintiff its costs and attorney's fees reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- f. Grant Plaintiff such other and further relief as the Court may deem just and proper.

January 8, 2019

Respectfully submitted,

/s/ Kevin T. Barnett

Kevin T. Barnett (D.C. Bar No. 1003410)

Covington & Burling LLP

One CityCenter

850 Tenth Street NW

Washington, DC 20001

(202) 662-5430

kbarnett@cov.com

ATTORNEY FOR PLAINTIFF